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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAMESH "SUNNY" BALWANI,

Defendant.

) Case No. 18-CR-00258 EJD

) UNITED STATES' OPPOSITION TO
) DEFENDANT'S MOTION TO EXCLUDE
) EVIDENCE OF ALTERING PFIZER REPORT

) Date: May 3, 2022

) Time: 8:30 a.m.

) Court: Hon. Edward J. Davila

1 The government opposes Defendant Ramesh “Sunny” Balwani’s Motion to Exclude Evidence of
 2 Altering Pfizer Report (ECF No. 1419 (“Mot.”)) for the same reasons explained in its prior opposition,
 3 filed at ECF No. 1337, and the accompanying argument. *See* 03/11/2022 Trial Transcript (“3/11 Tr.”) at
 4 503:12–549:16; 04/06/2022 Trial Transcript (“4/6 Tr.”) at 2183:1–2198:23, 2329:3–2330:7, 2441:19–
 5 2442:18.

6 First and foremost, Defendant’s Motion fails to address the government’s argument that the
 7 Pfizer-related report may be admissible to demonstrate the falsity of what was subsequently provided to
 8 Theranos investors. *See* ECF No. 1337 at 8. Indeed, both parties asserted that the Court could provide a
 9 limiting instruction if it were to admit the pharmaceutical-related reports that such admission was solely
 10 to prove falsity. *See, e.g.*, 3/11 Tr. at 516:8–9, 529:6–18, 533:25–534:15. That the government sought
 11 to admit the Schering Plough-related report only to show Defendant’s knowledge does not preclude the
 12 government from seeking to admit the Pfizer-related report for an alternative reason. *See* 4/6 Tr. at
 13 2329:3–2330:7. Thus, falsity remains a basis to admit the unaltered Pfizer-related report and testimony
 14 regarding whether or not Pfizer approved use of its logo in the altered report.

15 Second, the government maintains that the documents are fully admissible because there is
 16 sufficient evidence to allow the jury to infer that Defendant had actual knowledge of altering the
 17 pharmaceutical-related reports even if his co-Defendant, co-conspirator, and then-romantic partner
 18 Elizabeth Holmes was the person who actually made the alterations as she claimed during her trial. *See,*
 19 *e.g.*, ECF No. 1337 at 3–6. In addition to the evidence showing Defendant is personally and
 20 professionally invested in Theranos in spring 2010, as summarized in ECF No. 1337 at 3–6, at least two
 21 investors have already testified in this trial that Defendant had command over facts surrounding
 22 Theranos’ business with pharmaceutical companies. Patrick Mendenhall recently testified that
 23 Ms. Holmes directed him to Defendant for specific details—and he felt that Defendant “had strong
 24 command over the details”—which included a description comparing Theranos’ purported advantage
 25 over other companies for clinical trials with pharmaceutical companies and statements by Defendant that
 26 Theranos was profitable and had sustaining revenue from its clinical trial work. *See* 04/29/2022 Trial
 27 Transcript at 4266:6–8, 4284:3–4290:11, 4292:13–19, 4297:2–4302:1, 4357:1–4358:17, 4378:4–12;
 28 TX 4059. In addition, Defendant sent representative of investor-victim RDV Corporation,

1 Lisa Peterson, due diligence materials (in hard copy) pursuant to a confidentiality-agreement that he
 2 signed and later sent those same materials by email, which included claims that Theranos had current
 3 pharmaceutical company clients and expected \$40 million in revenue from pharmaceutical companies
 4 when, in truth, Theranos had zero revenue from pharmaceutical companies in 2013 and 2014.
 5 04/26/2022 Trial Transcript at 3846:14–23, 3852:8–13, 3864:16–3866:22, 3870:9–3871:22, 3884:6–
 6 3892:25, 3894:25–3897:8. *But see* 04/05/2022 Trial Transcript at 1993:4–1996:21; TX 7753.
 7 Defendant also regularly sent the altered Pfizer-related report to potential investors and discussed doing
 8 so with co-Defendant Holmes. *See, e.g.*, ECF No. 1179-2 at 89 (Holmes texts Balwani “Am planning
 9 on including all we sent dst, including the Pfizer report. Let me know if you disagree.”); ECF No. 1338-
 10 4 (Defendant sending reports to potential investor BDT).

11 The probative value of the evidence is not substantially outweighed by potential prejudice and
 12 thus the evidence should not be excluded under Federal Rule of Evidence 403 for the reasons asserted in
 13 the government’s prior brief at ECF No. 1337 at 8–9, and for the reasons stated by the Court in
 14 admitting over objection the Schering Plough-related reports, *see* 4/6 Tr. at 2441:19–2442:18.

15 Finally, as the government previously argued, the documents are admissible under a vicarious
 16 liability theory, for the reasons stated in ECF No. 1337 at 6–8. *See also* 3/11 Tr. at 523:1–524:15.

17 In sum, the government respectfully requests the Court deny Defendant’s Motion to exclude
 18 evidence relating to the improperly altered Pfizer-related report.
 19

20 DATED: May 2, 2022

Respectfully submitted,

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